

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

CIVIL ACTION NO.: 3:20-cv-10628-MGM

JEREMY HOLLINS,)
Plaintiff,)
)
vs.)
)
THE CITY OF WEST SPRINGFIELD,)
THOMAS SUDNICK, JOSEPH WOLOWICZ,)
JOSEPH CASEY, NATHAN O'BRIEN,)
ADAM POLASTRY, RONALD)
CAMPURCIANI, JOHN/JANE DOES)
(Current or former employees of the City of)
West Springfield), and MASSACHUSETTS)
INTERLOCAL INSURANCE ASSOCIATION,)
Defendants.)

**DEFENDANTS' ANSWER TO PLAINTIFF'S THIRD AMENDED
COMPLAINT AND DEMAND FOR JURY TRIAL**

NOW COME the Defendants, **THE CITY OF WEST SPRINGFIELD, THOMAS SUDNICK, JOSEPH WOLOWICZ, JOSEPH CASEY, NATHAN O'BRIEN, ADAM POLASTRY,** and **RONALD CAMPURCIANI** ("Defendants"), and in answer to the Plaintiff's Amended Complaint ("Amended Complaint"), by the counts and paragraphs numbered therein, say:

PARTIES

1. The Defendants neither admit nor deny the allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

2. The Defendants admit the allegations contained in Paragraph 2 of the Plaintiff's Amended Complaint.

3. The Defendants admit the allegations contained in Paragraph 3 (first sentence) of the Plaintiff's Amended Complaint. The Defendants admit the allegations contained in Paragraph 3 (second sentence) of the Plaintiff's Amended Complaint. The Defendants neither admit nor deny the allegations contained in Paragraph 3 (third sentence) of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

4. The Defendants admit the allegations contained in Paragraph 4 (first, second and third sentences) of the Plaintiff's Amended Complaint. The Defendants neither admit nor deny the allegations contained in Paragraph 4 (fourth sentence) of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

5. The Defendants admit the allegations contained in Paragraph 5 (first, second and third sentences) of the Plaintiff's Amended Complaint. The Defendants neither admit nor deny the allegations contained in Paragraph 5 (fourth sentence) of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

6. The Defendants admit the allegations contained in Paragraph 6 (first, second and third sentences) of the Plaintiff's Amended Complaint. The Defendants neither admit nor deny the allegations contained in Paragraph 6 (fourth sentence) of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

7. The Defendants admit the allegations contained in Paragraph 7 (first, second and third sentences) of the Plaintiff's Amended Complaint. The Defendants neither admit nor deny the allegations contained in Paragraph 7 (fourth sentence) of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

8. The Defendants admit the allegations contained in Paragraph 8 (first and second sentences) of the Plaintiff's Amended Complaint. The Defendants neither admit nor deny the allegations contained in Paragraph 8 (third sentence) of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

9. The Defendants neither admit nor deny the allegations contained in Paragraph 9 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

10. The Defendants admit the allegations contained in Paragraph 10 of the Plaintiff's Amended Complaint.

11. The Defendants admit the allegations contained in Paragraph 11 of the Plaintiff's Amended Complaint.

12. The Defendants deny the allegations contained in Paragraph 12 of the Plaintiff's Amended Complaint.

13. The Defendants neither admit nor deny the allegations contained in Paragraph 13 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

14. The Defendants deny the allegations contained in Paragraph 14 of the Plaintiff's Amended Complaint.

JURISDICTION AND VENUE

15. The Defendants neither admit nor deny the allegations contained in Paragraph 15 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

16. The Defendants neither admit nor deny the allegations contained in Paragraph 16 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

17. The Defendants neither admit nor deny the allegations contained in Paragraph 17 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

18. The Defendants admit the allegations contained in Paragraph 18 of the Plaintiff's Amended Complaint.

FACTUAL ALLEGATIONS

19. The Defendants admit the allegations contained in Paragraph 19 of the Plaintiff's Amended Complaint.

20. The Defendants deny the allegations contained in Paragraph 20 of the Plaintiff's Amended Complaint.

21. The Defendants deny the allegations contained in Paragraph 21 of the Plaintiff's Amended Complaint.

22. The Defendants deny the allegations contained in Paragraph 22 of the Plaintiff's Amended Complaint.

23. The Defendants deny the allegations contained in Paragraph 23 of the Plaintiff's Amended Complaint.

24. The Defendants deny the allegations contained in Paragraph 24 of the Plaintiff's Amended Complaint.

25. The Defendants deny the allegations contained in Paragraph 25 of the Plaintiff's Amended Complaint.

26. The Defendants deny the allegations contained in Paragraph 26 of the Plaintiff's Amended Complaint.

27. The Defendants deny the allegations contained in Paragraph 27 of the Plaintiff's Amended Complaint.

28. The Defendants neither admit nor deny the allegations contained in Paragraph 28 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

29. The Defendants deny the allegations contained in Paragraph 29 of the Plaintiff's Amended Complaint.

30. The Defendants deny the allegations contained in Paragraph 30 of the Plaintiff's Amended Complaint.

31. The Defendants deny the allegations contained in Paragraph 31 of the Plaintiff's Amended Complaint.

32. The Defendants deny the allegations contained in Paragraph 32 of the Plaintiff's Amended Complaint.

33. The Defendants deny the allegations contained in Paragraph 33 of the Plaintiff's Amended Complaint.

34. The Defendants deny the allegations contained in Paragraph 34 of the Plaintiff's Amended Complaint.

35. The Defendants admit the allegations contained in Paragraph 35 of the Plaintiff's Amended Complaint.

36. The Defendants deny the allegations contained in Paragraph 36 of the Plaintiff's Amended Complaint.

37. The Defendants neither admit nor deny the allegations contained in Paragraph 37 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

38. The Defendants admit the allegations contained in Paragraph 38 of the Plaintiff's Amended Complaint.

39. The Defendants neither admit nor deny the allegations contained in Paragraph 39 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

40. The Defendants neither admit nor deny the allegations contained in Paragraph 40 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

41. The Defendants neither admit nor deny the allegations contained in Paragraph 41 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

42. The Defendants neither admit nor deny the allegations contained in Paragraph 42 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

43. The Defendants neither admit nor deny the allegations contained in Paragraph 43 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

44. The Defendants neither admit nor deny the allegations contained in Paragraph 44 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

45. The Defendants neither admit nor deny the allegations contained in Paragraph 45 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

46. The Defendants neither admit nor deny the allegations contained in Paragraph 46 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

47. The Defendants deny the allegations contained in Paragraph 47 of the Plaintiff's Amended Complaint.

48. The Defendants say that they need not respond to the allegations as contained in Paragraph 48 as the document(s) referred to therein speaks for itself.

49. The Defendants neither admit nor deny the allegations contained in Paragraph 49 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

50. The Defendants neither admit nor deny the allegations contained in Paragraph 50 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

51. The Defendants say they need not respond to the allegations as contained in Paragraph 51 as they do not relate to them.

52. The Defendants say they need not respond to the allegations as contained in Paragraph 52 as they do not relate to them.

53. The Defendants say they need not respond to the allegations as contained in Paragraph 53 as they do not relate to them.

54. The Defendants say they need not respond to the allegations as contained in Paragraph 54 as they do not relate to them.

55. The Defendants say that they need not respond to the allegations as contained in Paragraph 55 as the document(s) referred to therein speaks for itself.

56. The Defendants say they need not respond to the allegations as contained in Paragraph 56 as they do not relate to them.

57. The Defendants say that they need not respond to the allegations as contained in Paragraph 57 as the document(s) referred to therein speaks for itself.

58. The Defendants say that they need not respond to the allegations as contained in Paragraph 58 as the document(s) referred to therein speaks for itself.

59. The Defendants neither admit nor deny the allegations contained in Paragraph 59 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

COUNT I – Violations of 42 U.S.C. § 1983 and Mass. Gen. Laws ch. 12, § 11H
Use of Excessive Force
(Defendants, Sudnick, Wolowicz, Casey, O'Brien, and John/Jane Does)

60. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 59 of the Plaintiff's Amended Complaint and incorporate them herein by reference.

61. The Defendants admit the allegations contained in Paragraph 61 of the Plaintiff's Amended Complaint.

62. The Defendants admit the allegations contained in Paragraph 62 of the Plaintiff's Amended Complaint.

63. The Defendants deny the allegations contained in Paragraph 63 of the Plaintiff's Amended Complaint.

64. The Defendants deny the allegations contained in Paragraph 64 of the Plaintiff's Amended Complaint.

65. The Defendants deny the allegations contained in Paragraph 65 of the Plaintiff's Amended Complaint.

COUNT II – VIOLATION OF 42 U.S.C. § 1983
(Chief Campurciani, Sergeant Polastry, John/Jane Does, and The City)

66. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 65 of the Plaintiff's Amended Complaint and incorporate them herein by reference.

67. The Defendants admit the allegations contained in Paragraph 67 of the Plaintiff's Amended Complaint.

68. The Defendants admit the allegations contained in Paragraph 68 of the Plaintiff's Amended Complaint.

69. The Defendants neither admit nor deny the allegations contained in Paragraph 69 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

70. The Defendants neither admit nor deny the allegations contained in Paragraph 70 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

71. The Defendants deny the allegations contained in Paragraph 71 of the Plaintiff's Amended Complaint.

72. The Defendants neither admit nor deny the allegations contained in Paragraph 72 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

73. The Defendants deny the allegations contained in Paragraph 73 of the Plaintiff's Amended Complaint.

74. The Defendants deny the allegations contained in Paragraph 74 of the Plaintiff's Amended Complaint.

75. The Defendants deny the allegations contained in Paragraph 75 of the Plaintiff's Amended Complaint.

76. The Defendants deny the allegations contained in Paragraph 76 of the Plaintiff's Amended Complaint.

77. The Defendants deny the allegations contained in Paragraph 77 of the Plaintiff's Amended Complaint.

COUNT III – Violation of Mass. Gen. Laws ch. 12, §§ 11H and 11I
(Sudnick, Wolowicz, Casey, O'Brien, Polastry, and John/Jane Does)

78. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 77 of the Plaintiff's Amended Complaint and incorporate them herein by reference.

79. The Defendants admit the allegations contained in Paragraph 79 of the Plaintiff's Amended Complaint.

80. The Defendants deny the allegations contained in Paragraph 80 of the Plaintiff's Amended Complaint.

81. The Defendants deny the allegations contained in Paragraph 81 of the Plaintiff's Amended Complaint.

82. The Defendants deny the allegations contained in Paragraph 82 of the Plaintiff's Amended Complaint.

83. The Defendants deny the allegations contained in Paragraph 83 of the Plaintiff's Amended Complaint.

84. The Defendants deny the allegations contained in Paragraph 84 of the Plaintiff's Amended Complaint.

COUNT IV – Violations of Mass. Gen. Laws ch. 12, §§ 11H and 11I
(Chief Campurciani, Sergeant Polastry, and The City of West Springfield)

85. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 84 of the Plaintiff's Amended Complaint and incorporate them herein by reference.

86. The Defendants admit the allegations contained in Paragraph 86 of the Plaintiff's Amended Complaint.

87. The Defendants deny the allegations contained in Paragraph 87 of the Plaintiff's Amended Complaint.

88. The Defendants admit the allegations contained in Paragraph 88 of the Plaintiff's Amended Complaint.

89. The Defendants deny the allegations contained in Paragraph 89 of the Plaintiff's Amended Complaint.

90. The Defendants neither admit nor deny the allegations contained in Paragraph 90 of the Plaintiff's Amended Complaint as they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and leaves the Plaintiff to his burden of proof.

91. The Defendants deny the allegations contained in Paragraph 91 of the Plaintiff's Amended Complaint.

COUNT V – Assault and Battery
(Sudnick, Wolowicz, Casey, O'Brien, Polastry, and John/Jane Does)

92. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 91 of the Plaintiff's Amended Complaint and incorporate them herein by reference.

93. The Defendants deny the allegations contained in Paragraph 93 of the Plaintiff's Amended Complaint.

94. The Defendants deny the allegations contained in Paragraph 94 of the Plaintiff's Amended Complaint.

95. The Defendants deny the allegations contained in Paragraph 95 of the Plaintiff's Amended Complaint.

96. The Defendants deny the allegations contained in Paragraph 96 of the Plaintiff's Amended Complaint.

97. The Defendants admit the allegations contained in Paragraph 97 of the Plaintiff's Amended Complaint.

98. The Defendants deny the allegations contained in Paragraph 98 of the Plaintiff's Amended Complaint.

COUNT VI – Massachusetts Tort Claims Act
Mass. Gen. Laws ch. 258, §§ 2 and 4
(The City of West Springfield)

99. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 98 of the Plaintiff's Amended Complaint and incorporate them herein by reference.

100. The Defendants admit the allegations contained in Paragraph 100 of the Plaintiff's Amended Complaint.

101. The Defendants deny the allegations contained in Paragraph 101 of the Plaintiff's Amended Complaint.

102. The Defendants deny the allegations contained in Paragraph 102 of the Plaintiff's Amended Complaint.

103. The Defendants deny the allegations contained in Paragraph 103 of the Plaintiff's Amended Complaint.

COUNT VII – Intentional and/or Negligent Infliction of Emotional Distress
(Sudnick, Wolowicz, Casey, O'Brien, Polastry, and John/Jane Does, the City)

104. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 103 of the Plaintiff's Amended Complaint and incorporate them herein by reference.

105. The Defendants deny the allegations contained in Paragraph 105 of the Plaintiff's Amended Complaint.

106. The Defendants deny the allegations contained in Paragraph 106 of the Plaintiff's Amended Complaint.

107. The Defendants deny the allegations contained in Paragraph 107 of the Plaintiff's Amended Complaint.

COUNT VIII – Unfair or Deceptive Claim Settlement Practices
Mass. Gen. Law chs. 93A, 176D
(Massachusetts Interlocal Insurance Association)

108. The Defendants repeat and reallege their answers to the allegations contained in Paragraphs 1 through 107 of the Plaintiff's Amended Complaint and incorporate them herein by reference.

109. The Defendants say they need not respond to the allegations as contained in Paragraph 109 as they do not relate to them.

110. The Defendants say they need not respond to the allegations as contained in Paragraph 110 as they do not relate to them.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Defendants say that the injuries and damages alleged were caused in whole or in part by the Plaintiff's own negligence, which was as great or greater than any negligence of the Defendants.

SECOND DEFENSE

The Defendants say that if they were negligent as alleged which they specifically deny, the negligence of the Plaintiff was greater than the alleged negligence of the Defendants and, therefore, the Plaintiff cannot recover.

THIRD DEFENSE

The Defendants say that the incident as alleged in the Plaintiff's Amended Complaint was not caused by any person for whose conduct the Defendants are legally responsible.

FOURTH DEFENSE

The Defendants say that at the time of the alleged incident the Plaintiff was guilty of a violation of the law which contributed to the alleged incident.

FIFTH DEFENSE

The Defendants say that this action was not commenced within the time required by the laws made and provided therefor.

SIXTH DEFENSE

The Plaintiff is not entitled to recover as the Amended Complaint does not set forth a claim upon which relief can be granted.

SEVENTH DEFENSE

In further answering, the Defendants say that the Plaintiff's claim is frivolous and not made in good faith, and the Defendants, therefore, demand their costs and attorney's fees pursuant to G.L. c. 231, S 6F.

EIGHTH DEFENSE

The Defendant say that if Plaintiff was injured as alleged, such was due to the acts or negligence of another, which constitute an intervening, superseding cause and, therefore, Defendants are not liable.

NINTH DEFENSE

The Defendants say that the Plaintiff has failed to comply with the requirements of M.G.L. c. 258, §§ 2 and 4 and, as such, the Amended Complaint must be dismissed.

TENTH DEFENSE

The Defendants say that it is immune from liability in this case.

ELEVENTH DEFENSE

The Defendants say that the discretionary function exemption applies so as to preclude the imposition of liability in this case.

TWELFTH DEFENSE

The Defendants say that M.G.L. c. 258, § 10 precludes the imposition of liability in this case.

THIRTEENTH DEFENSE

The Defendants say that they are immune from liability as Defendants' actions are privileged.

FOURTEENTH DEFENSE

The Defendants cannot be held liable for violating the civil rights of the Plaintiff as there has been no official or unofficial policy, custom, ordinance, regulation, or practice resulting in the deprivation of constitutional rights alleged.

FIFTEENTH DEFENSE

The Defendants say that the claims alleged pursuant to M.G.L. c. 12, § 11H and I must be dismissed as there are no allegations of deprivation of constitutional and/or statutory rights by force, threat, intimidation, or coercion.

SIXTEENTH DEFENSE

The doctrine of qualified immunity precludes the imposition of liability.

SEVENTEENTH DEFENSE

The Defendants state that any actions taken by the Defendants in connection with the allegations in this Amended Complaint were justified and required by considerations of public policy, safety and law enforcement.

EIGHTEENTH DEFENSE

The Defendants say that they are immune from liability for damages for any violation of the Plaintiff's civil rights under federal or state law since their conduct at all relevant times was in good faith, without malice and not in disregard of settled principles of constitutional law.

NINETEENTH DEFENSE

The Defendants state that Plaintiff has failed to set forth an actionable claim, pursuant to 42 USC § 1983 since the Plaintiff is unable to establish that there was a deliberate indifference to the rights of its inhabitants or that the alleged deficiency is related to Plaintiff's alleged injuries.

THE DEFENDANTS, THE CITY OF WEST SPRINGFIELD, THOMAS SUDNICK, JOSEPH WOLOWICZ, JOSEPH CASEY, NATHAN O'BRIEN, ADAM POLASTRY, and RONALD CAMPURCIANI DEMAND A TRIAL BY JURY.

Respectfully submitted,

The Defendants,
**THE CITY OF WEST SPRINGFIELD,
THOMAS SUDNICK, JOSEPH WOLOWICZ,
JOSEPH CASEY, NATHAN O'BRIEN, ADAM
POLASTRY, and RONALD CAMPURCIANI**

Dated: June 16, 2020

By /s/ Nancy Frankel Pelletier
Nancy Frankel Pelletier, Esq., BBO No. 544402
~and~

By /s/ Jeffrey J. Trapani
Jeffrey J. Trapani, Esq., BBO No. 661094
Both of
Robinson Donovan, P.C.
1500 Main Street, Suite 1600
Springfield, Massachusetts 01115
Phone (413) 732-2301 Fax (413) 452-0342
npelletier@robinsondonovan.com
jtrapani@robinsondonovan.com

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 16th day of June 2020.

Subscribed under the penalties of perjury.

/s/ Nancy Frankel Pelletier, Esq.
Nancy Frankel Pelletier, Esq.